

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
DECEMBER SESSION, 1995

**FILED**

January 31, 1996

**Cecil Crowson, Jr.**  
Appellate Court Clerk

**THOMAS L. MILLS,** )  
 )  
Appellant )  
 )  
vs. )  
 )  
**STATE OF TENNESSEE,** )  
 )  
Appellee )

No. 03C01-9505-CR-00137

HAMILTON COUNTY

Hon. **DOUGLAS A. MEYER**, Judge

(Post-Conviction)

For the Appellant:

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For the Appellee:

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OPINION FILED: \_\_\_\_\_

AFFIRMED

**David G. Hayes**  
Judge

## OPINION

The appellant, Thomas L. Mills, appeals as of right from the dismissal of his petition for post-conviction relief. The appellant contends that the post-conviction court erred in finding that the petition was barred by the three year statute of limitations.<sup>1</sup>

The judgment of the post-conviction court is affirmed.

## FACTUAL BACKGROUND

On March 5, 1985, the appellant pled guilty to armed robbery in the Criminal Court of Hamilton County. On April 17, 1985, following a sentencing hearing, the appellant was sentenced to twenty-five years in the state penitentiary. The conviction was affirmed by this court on December 19, 1985. State v. Mills, No. 936 (Tenn. Crim. App. at Knoxville, Dec. 19, 1985). Permission to appeal was denied by the Tennessee Supreme Court on March 3, 1986.

On October 3, 1994, the appellant filed the instant petition for post-conviction relief. The initial petition, filed *pro se*, was twice amended after the appellant was provided appointed counsel. The *pro se* petition alleges that the prosecutor and the appellant's attorney lied to the appellant at his guilty plea hearing. The amended petition alleges that the appellant's guilty plea was not knowingly entered due to the ineffectiveness of counsel in failing to advise the

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<sup>1</sup>Tenn. Code Ann. § 40-30-102 (1990) (repealed 1995), provides: "A prisoner in custody under sentence of a court of this state must petition for post-conviction relief under this chapter within three (3) years of the date of the final action of the highest state appellate court to which an appeal is taken or consideration of such petition shall be barred."

appellant of available alternatives to pleading guilty. The amended petition additionally alleges that counsel was ineffective for failing to properly investigate the charges against the appellant. The State filed an answer, requesting that the petition be dismissed, because the petition is time-barred. At a motion hearing on February 1, 1995, the post-conviction court dismissed the petition, finding it to be barred by the applicable statute of limitations.

### **ANALYSIS**

The appellant contends that the dismissal of his petition violates his right to due process. In support of his contention, the appellant asserts that, at the time of his conviction, there was no statute of limitations applicable to the filing of a petition for post-conviction relief. Moreover, the appellant argues that he was unaware of the subsequent enactment of a statute of limitations and that he possesses a limited educational background.

In Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992), our supreme court held that the three year statute of limitations provision in Tenn. Code Ann. § 40-30-102 complies with the due process requirements of both state and federal constitutions. Furthermore, this court, in Willis v. State, No. 01C01-9211-CR-00359 (Tenn. Crim. App. at Nashville, October 21, 1993), held that lack of knowledge of the statute of limitations provision does not excuse late filings. See generally Skinner v. State, No. 02C01-9403-CC-00039 (Tenn. Crim. App. at Jackson, July 13, 1994); Spence v. State, No. 968 (Tenn. Crim. App. at Knoxville, November 8, 1991). This issue is without merit.

The appellant next contends that the post-conviction court erred by not finding a "safety valve" to exempt the late filing of his petition. The appellant

cites Burford as authority for this position. The appellant's argument is misplaced. Our supreme court recognized in Burford that, because of a procedural trap, "it is possible that under the circumstances of a particular case, application of the statute may not afford a reasonable opportunity to have the claimed issue heard and decided." Burford, 845 S.W.2d at 208 (citations omitted). Burford has no application to the facts of the case before us.

The Tennessee Supreme Court, in Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995), provided a three-step process to be utilized by the courts when applying Burford to determine whether a petitioner's claim for relief is time-barred. This process requires the reviewing court to: (1) determine when the limitations period would normally have begun to run; (2) determine whether the grounds for relief actually arose after the limitations period would normally have commenced; and (3) if the grounds are "later-arising," determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim. Id. Applying this procedure to the case before us, we conclude that the limitations period for the appellant began to run on July 1, 1986.<sup>2</sup> Accordingly, because the grounds the appellant alleges in support of his petition were available on July 1, 1986, the appellant's claims became time-barred on July 1, 1989. The appellant's petition was filed on October 3, 1994, more than five years after the limitations period had run. The appellant's filing was clearly outside the statutory time frame, and, therefore, his petition is barred by the applicable statute of limitations.

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<sup>2</sup>The appellant's petition was required to be filed within three years of the date on which his conviction became final. Tenn. Code Ann. § 40-30-102. His conviction became final on March 3, 1986. However, Tenn. Code Ann. § 40-30-102, which became effective July 1, 1986, was given prospective application for cases which were final prior to its effective date. Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App.), perm to appeal denied, (Tenn. 1988). Thus, in the instant case, the statute of limitations on the appellant's claims began to run on July 1, 1986.

Accordingly, we affirm the post-conviction court's dismissal of the petition.

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David G. Hayes, Judge

CONCUR:

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William M. Barker, Judge

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Jerry L. Smith, Judge